IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

And
THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 21971 of 2004

Between:

Dibbidi Ramu, S/o.Demudu @ Suryanarayana,
Beena Bhupalapatnam, Rolugunta Mandal,
Visakhapatnam District.

..... PETITIONER

AND

1 The Collector & District Magistrate, Visakhapatnam District.
2 The Government of Andhra Pradesh rep.by its Chief Secretary to Govt., Secretariat buildings, AP Secretariat,
Hyderabad.
3 The Superintendent, Central Jail, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Habeas corpus directing the Respondents to produce the Detenue

Dibbidi Ramana, S/o.Late Demudu @ Suryanarayana, aged about 40 years, now detained in central prison, Visakhapatnam before this Honourable court and he may be directed to set at liberty forthwith by declaring the order of detention passed by the 1st Respondent in R.C.No.1608/2003, dated 18-10-2004 as illegal and unconstitutional.

Counsel for the Petitioner: MR.T.NIRANJAN REDDY

Counsel for the Respondents No1 to 3.: The Advocate General

The Court, at the stage of admission, made the following:

ORAL ORDER: (Per: The Hon'ble Mr. Justice Bilal Nazki)

This Habeas Corpus petition is filed by the petitioner herein challenging the order of detention of his brother – Dibbidi Ramana (herein after referred to as 'detenue'). The detenue has been arrested on account of the detention order passed by the Collector and District Magistrate, Visakhapatnam on 18-10-2004. The grounds of detention have been served on the detenue. One of the grounds mentioned in the grounds of detention i.e., Ground No.2 reads as follows:-

> "2. The above ground is sustained because when he was smuggling Ganja of about 102 Kgs., in (6) Gunny bags along with Kana Pandi s/o (late) Kandhan Swamy, Aged: 35 years, r/o Carepatti village, Usalamatti Taluk, Madurai district, Tamilnadu and Pana Vachehapan s/o (late) Palswamy, Age: 32 years, r/o Usalampatti taluk, Madurai district, Tamilnadu State, a case in Cr.No. 446/2002-03, dated 31-12-2002 has been booked. He was arrested on 5-1-2003 and sent to judicial custody. The charge sheet was filed and the case is under trial."

Counter affidavit has been filed.

Learned counsel for the petitioner has submitted that in crime No.446/ 2002-03, (S.C.No. 7 of 2003) some of the accused were convicted by the judgment dated 03-06-2003. The detenue, who was the accused in Cr.No. 446/2002-03, has been acquitted as early as on 03-06-2003. Learned District Magistrate was not aware the fact that the detenue had been acquitted in the said case and in the grounds of

detention it was stated that the charge sheet was filed and the case is under trial. Had it been known to the learned District Magistrate that the detenue has been acquitted in the said case, it cannot be a guess as to what would have been the effect of not framing the opinion by the learned District Magistrate with regard to the order of detention of the detenue. Since the District Magistrate was not at all aware of the fact that the detenue had been acquitted and he took into consideration the fact that the detenue was facing trial, therefore this is an irrelevant material on the basis of which, the District Magistrate came to the conclusion that the detenue deserves to be detained. Learned counsel for the petitioner relies on an earlier judgment of this Court in *M. PREMA BAI vs. COMMISSIONER OF POLICE, HYDERABAD* ([1]) in this connection.

We agree with the submission of the learned counsel for the petitioner that the material contain in Ground No.2 of the grounds was irrelevant. Therefore, the order of detention cannot be upheld. The order of detention is quashed. The respondents are directed to release the detenue from custody forthwith, if not required in any other case.

The writ petition is accordingly allowed. No costs.

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BILAL NAZKI, J

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DR. G. YETHIRAJULU, J

Dated: 13-12-2004

Pvks/*

To

1 The Collector & District Magistrate, Visakhapatnam District.
2 The Chief Secretary to Government, the Government of Andhra Pradesh, Secretariat buildings, AP Secretariat, Hyderabad.
3 The Superintendent, Central Jail, Visakhapatnam.

4.2CCs to the Advocate General, A.P. High Court Buildings, Hyderabad (OUT).

5.2CD copies

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